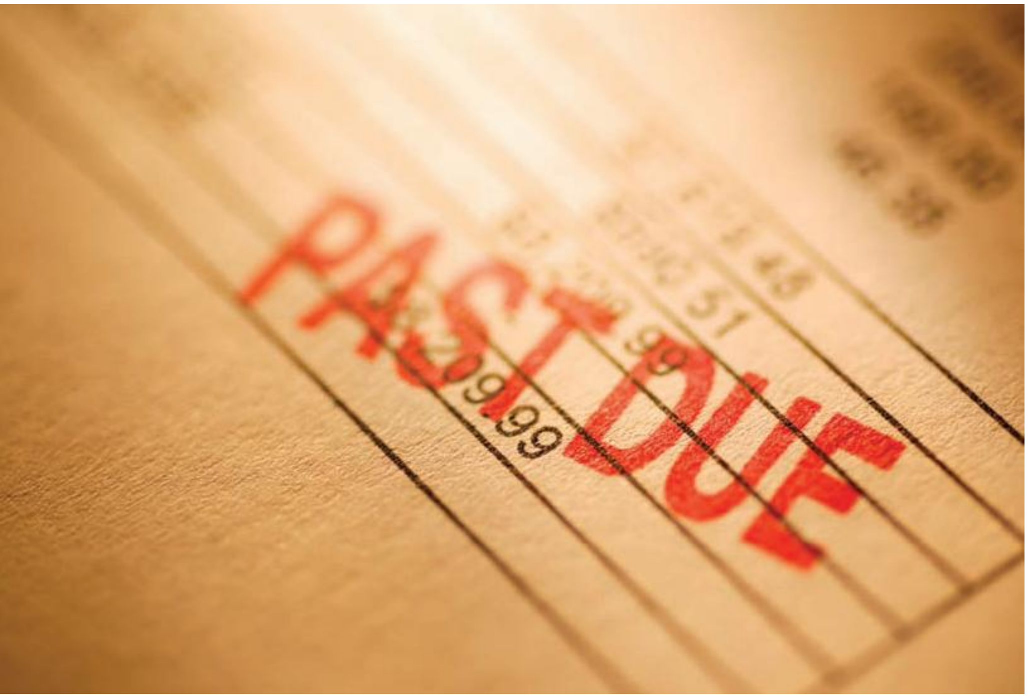

Ask the HOA Expert

Governing Documents Dictate Past Due Collections

by Richard Thompson

Q **Charging Higher Interest**
The board has begun to charge twelve percent interest on past due balances. This is in conflict to the governing documents which state eight percent per annum.

A The board cannot institute a collection policy that contradicts the governing documents. Only an appropriate vote of the members (as defined by the governing documents) can change or eliminate the stated percentage.

Q **Using an HOA Contractor**
Can a homeowners association force unit owners to use its contractor to repair unit interior damage when the HOA is responsible for repairs? In this case, water seeped in due to failed waterproofing and damaged carpet, drywall, paint, baseboards, and insulation. The HOA is paying a contractor to do both exterior and interior repairs, but I do not want to use

this contractor. I'll accept the HOA's cost estimate to do my interior repairs but want to get my own contractor.

A The reason the HOA wants one contractor is it's easier, faster, and cheaper to use one contractor for all repairs. But unless interior repairs involve things like structural repairs (safety issue) or mold remediation (health issue) which can adversely impact neighboring units, individual unit owners have the right to take care of interior repairs using their own contractor.

Q **Resale Disclosure Packets**

I am a real estate agent specializing in HOA property. In the past, I was used to seeing a charge for resale disclosure packages of around $100. Yet, recently I've seen charges up to $250. Isn't there some sort of regulation that prohibits price gouging?

A HOAs and their management companies are entitled to a reasonable charge for producing information related to HOA home and unit sales. This should not be a profit center for a self-managed HOA although it is usually a profit center for an HOA management company. The board needs to make sure that charges are commensurate with the actual work required and not allow the management company to set any price it wants, especially if it could hamper sales.

That said, some states have more complex resale disclosure requirements than others, so time requirements to fulfill them varies from state to state. Also, Fannie Mae and Freddie Mac (the two entities that underwrite the majority of condominium mortgage loans) enacted more stringent underwriting requirements in 2007 and 2008 which expand lender verifications of HOA reserve studies, renter occupancy, delinquency rates, and insurance. This has placed additional burden and time on boards and managers to comply with resale disclosure, so an increase from $100 to $250 may be entirely reasonable. You need to inquire on a case by case basis what the justification for the additional cost is.

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